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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,863	06/16/2006	Masamichi Kaneko	1034185-000068	8663

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BUCHANAN, INGERSOLL & ROONEY PC  
POST OFFICE BOX 1404  
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EXAMINER
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DEMEREE, CHRISTOPHER R

ART UNIT	PAPER NUMBER
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3782

NOTIFICATION DATE	DELIVERY MODE
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09/17/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/542,863	<b>Applicant(s)</b> KANEKO, MASAMICHI	
	<b>Examiner</b> CHRISTOPHER DEMEREE	<b>Art Unit</b> 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) 1 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 July 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/21/2005 and 6/16/2006</u> .                                 | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group II, Claims 2-6, in the reply filed on 7/15/2009 is acknowledged. The traversal is on the ground(s) that the claims satisfy the unity of invention requirement. This is not found persuasive because the special technical feature common to both Group I and Group II is the packaging container, which is old and well-known in the art.

The requirement is still deemed proper and is therefore made FINAL.

2. Claim 1 is withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 7/15/2009.

### ***Claim Objections***

3. Claims 2-6 are objected to because of the following informalities: Claim 2 recites, "APLH sealed by film", and does not define the acronym APLH. Examiner notes that the acronym should be defined in at least the first instance that it is used in order to clarify the claims. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 2-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Hess, III et al. (US 6131806 A; hereinafter Hess).

Regarding claims 2 and 3, Hess teaches a dispensing structure incorporating a valve containing fitment for mounting to a container comprising a cap (478) and a movable ring (470) fitted to the packaging container having a surface tilted at least forward on the front side of the top part and APLH sealed by film on said tilted surface (see Figures 21 and 22), wherein the frame body forming the pouring spout comprises a flange (442) connected with said tilted surface of the circumference of said APLH and a spout portion of a cylindrical shape integrally molded with the flange and cut approximately at an angle so as to be upright substantially, and wherein said cap is fitted removably to said pouring spout portion so as to plug said pouring spout, and said movable ring, disposed at the inner circumference of said pouring spout, with the cylindrical shape cut approximately at an angle at the lower end portion thereof, engages with said cap so as to rotate concurrently with the rotation of said cap, having a cutting part at the lower end portion of a shape cut approximately at an angle or the proximity thereto (Col 11 lines 32-47).

Regarding claims 4 and 5, Hess teaches a container wherein said movable ring comprises a guide groove (472) in the inner circumference surface of the pouring spout part and a guide boss (460) in the outer circumference surface of the movable ring so that the movable ring can move vertically when rotating with the rotation of the cap and wherein the position of the guide groove when completing the rotation is lower than that of the guide groove when starting the rotation (Col 11 lines 60-67).

Regarding claim 6, Hess teaches a container comprising a tamper-proof part righting against said flange part, wherein said rotation assist part engages with said tamper-proof part prior to opening so as to be disengaged easily by means of the cap rotation (Col 12 lines 13-20).

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wald (US 5564622 A); Kalberer et al. (US 5636785 A); Frazier et al. (US 5088643 A); Palm (US 2004/0169066 A1); Mogard (US 6253994 B1). These references teach cartons comprising plug-like closures substantially similar to that of the instant application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER DEMEREE whose telephone number is (571)270-1982. The examiner can normally be reached on Mon-Fri, 8:00 AM-5:00PM, Alt Fri, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher Demeree/  
Examiner, Art Unit 3782

/Nathan J. Newhouse/  
Supervisory Patent Examiner, Art Unit 3782